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From: C. Phipps [mailto:cphipps@upwelling.org]

Sent: Thursday, February 17, 2005 8:56 PM

To: MLPAComments@resources.ca.gov

Subject: MLPAComments: MLPA Central Coast Study Regions

This is a submission of public comment from a very experienced recreational diver, writing as a private individual, and not as the representative of any California organization with which my name might be associated. I am setting aside my numerous concerns about the MLPA process, so as to limit my comments to those of the approximate kind being sought.

I write as someone who dived the California coast for 13 years, from MacKerricher State Park (Mendocino Co.) south to Monterey, Carmel, Point Lobos, and Soberanes Point (Big Sur), then in the Channel Islands from Wilson Rock & San Miguel Island south to San Nicolas and Santa Catalina Islands. In the interest of brevity, I want to focus on just a few issues that may not yet have been brought to your attention.

Given the haste in which the MLPA process is being conducted, I believe it would be prudent to designate a 'study area' from among those that are of the minimum size necessary to provide 'replicates'.

I am keenly urging slowing the MLPA process to a more moderate pace for a number of reasons:

- [1] The complete neglect of the very important recreational diving fishery for abalones in northern California.
- [2] The likelihood of USFWS request for a no-take or no-entry MPA at one of their research sites despite bad faith toward the State on the sea-otter translocation.
- [3] Some 'study regions' are far too large, especially for travel to meetings by volunteers representing recreational interests.
- [4] Loss of coastal access mandated by the California Constitution and the Coastal Act (of 1972).
- [5] The unfavorable consequences for legitimate diver interests of optimistic or idealistic diver support for conservation actions promoted as beneficial or harmless to those interests:
 - [a] Marine Resources Protection Act (a.k.a. Prop. 132)(1990).
 - [b] Monterey Bay National Marine Sanctuary (Final EIS&MP: 1992).
 - [c] California Coastal National Monument (Final EIS&MP: 2005?).

I expand on these points, in order, in the paragraphs below, including Web-page addresses that provide more information.

The "MLPA Blue Ribbon Task Force February 15--17 [...] Draft document for discussion purposes", as downloaded today, completely fails to mention the recreational abalone fishery, arguably northern California's major recreational fishery, and certainly northern California's major diving fishery. This is a rather astonishing oversight. The fishery is legally limited by state law & regulation to breathhold (a.k.a. "free") diving and shore-picking; scuba diving for abalones is now illegal state-wide, so it technically cannot be placed under the needlessly narrow "Human activity" heading "scuba diving" in the draft. This recreational abalone fishery in northern California is all that remains in the state, following federally mandated sea-otter range expansion in central California ["Final revised recovery plan for the southern[sic] sea otter ...", announced as 68 FR 16305--16306], and regulatory closure of all recreational & commercial abalone fishing everywhere south of the Golden Gate. Northern California is notorious among divers for coastal topography that makes safe ocean access scarce for diving. Thus, the "not important" ranking should be changed to "contains important Jenner to Shelter Cove abalone area". Note that the abundance of abalone naturally decreases dramatically as one travels northward along the Mendocino Co. coast, which makes

the southern half of the county up to Point Arena more valuable than the northern part.

The impacts of sea otters on harvestable shellfish should be treated as irrelevant to opportunities for research that might be undertaken under the umbrella of the MLPA, because those effects have been already documented, e.g.:

[<http://www.upwelling.org/otter/biblio.html>](http://www.upwelling.org/otter/biblio.html)

to a degree that ought to be compelling to all but that furbearers' most devout admirers. The federal agency responsible for it: the U.S. Fish and Wildlife Service (USFWS), has demonstrated such startlingly bad faith on the sea-otter translocation to San Nicolas Island, authorized with conditions specified in (U.S.) Public Law 99-625:

[<http://www.upwelling.org/otter/pl99-625.html>](http://www.upwelling.org/otter/pl99-625.html)

allowed in California waters according to a USFWS Memorandum of Understanding (1987) with the State of California and the Department of Fish and Game:

[<http://www.upwelling.org/otter/so_mou87.html>](http://www.upwelling.org/otter/so_mou87.html)

that under no circumstances should Californians lose ocean access in favor of giving USFWS the de facto reward of designating a no-take or no-entry MPA at the traditional and precious ocean access for divers and the general public at Pt. Piedras Blancas (San Luis Obispo Co.).

I believe the 'study region' from Pt. Arena to Pt. Año Nuevo is far too large. Nearly 20 years ago I harshly criticized the U.S. Minerals Management Service for violating the widespread understanding of the state's geography by devising an Outer Continental Shelf Oil & Gas Lease Sale (119) study area that spanned such a large expanse of coastline to either side of the Golden Gate. The eerily similar proposal for a huge 'study region' is comparably inappropriate for the MLPA. Nautical miles of coastline are not an accurate indicator of travel time from its southern to northern end; that's approximately 5 hours by speed-limit-observant automobile, an excessive quantity for volunteer travel to meetings.

Among the most important criteria for recreational use of the ocean off the California coast, as mandated by the California Constitution and the Coastal Act (of 1972) is the number of safe accesses to the ocean for divers and other members of the general public. Will designating just a few of them as no-access or no-take reserves substantially reduce recreational diving and fishing access for the public in the designated 'study region'?

The process to designate the 4 Ecological Reserves mandated by the Marine Resources Protection Act (MRPA, a.k.a. Prop. 132) (1990) produced a surprise: Rather than choosing 'reserve' sites, which were required by the MRPA to be closed to public access, from among the many miles of central & northern California coast where divers had no safe access, the State's selection process chose its candidate sites from precisely the few places along the coast that had good ocean access; the rationale offered was a need for law enforcement access adequate to enforce the closures.

I strongly urged the organized recreational diving community to support the creation of the Monterey Bay National Marine Sanctuary (MBNMS) using the largest of the federally offered boundary options, and optimistic conservation-minded diving leaders responded by adopted that recommendation. The MBNMS has rewarded the diving community by causing unexpected problems despite creation of the MBNMS being promoted--by 1 of the same organizations that promoted the MLPA--as something that would (absolutely) not "restrict recreation or fishing" and would "enhance recreational use":

<<http://www.upwelling.org/sanct/CCCPDS89.html>>

Instead, over the next few years, the MBNMS

- * closed Jade Cove (Monterey Co.) to traditional personal-scale jade collecting, and in effect;
- * ended a popular annual diving event in a heavily trod part of Monterey Bay, for abalone-shaped chocolate confections by narrowly construing it as a violation of NMS regulations, then imposing onerous special-use fees;
- * funded and publicized a badly flawed "Diver Disturbance Study" that held divers up for public scorn and unfair criticism;
- * made a habit of filling the seat for a representative for sanctuary-wide diving interests on the Advisory Council, by choosing people unknown to the organized diving community or uninvolved in sanctuary-wide diving issues before being chosen.

The lesson I learned was not to rely on any seemingly logical assumption that "of course" diver support for creating a huge-boundary NMS would produce loyally favorable treatment of legitimate diving & fishing interests by its managers. Now, I hope that the idealistic supporters among some divers for comparably huge-boundary MLPA 'study areas'--and more pessimistic concerned divers--will not be comparably disappointed or infuriated by the managers of MPAs designated under MLPA authority.

It's important to keep in mind that divers are still waiting to learn the actual impact on diving that will result from the final regulations for the California Coastal National Monument, to be managed by the (U.S.) Bureau of Land Management (BLM).

It's entirely possible that seabird nesting and marine-mammal breeding & pupping sites will dramatically affect access to the ocean for divers & fishers.

I will defer to representatives of the organized recreational diving community in central California as to which of the smallest of the proposed 'study regions' they nominate as most appropriate; I could not support nomination from among the larger ones.

--Clay Phipps